IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 212 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

LOTUS HOTEL PRIVATE LIMITED

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 212 of 2000

PARTY-IN-PERSON for Petitioner No. 1-2

MR VM PANCHOLI, APP for Respondent No. 1

MR BHARAT T RAO for Respondent No. 1

MS PJ DAVAWALA for Respondent No. 2

DELETED for Respondent No. 3

LAW OFFICER BRANCH for Respondent No. 3

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 04/08/2003

ORAL JUDGEMENT

The two petitioners herein have preferred this petition under Article 226 of the Constitution of India as well as under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Code") for quashing and setting aside Criminal Case No.380/1991 filed against the two petitioners and other accused persons named in the said complaint, for an offence punishable under subsection 4 of Section 75 read with Section 611 of the Companies Act, 1956 and Regulation 18 of the Companies Regulations, 1956.

2. The said complaint has been filed before the learned Chief Metropolitan Magistrate at Ahmedabad by the Registrar of Companies - Gujarat, Ahmedabad against the two petitioners and two other accused persons.

3. The contentions in the said complaint disclose that by virtue of subsection 1 of Section 75 of the Companies Act, 1956 (for short, "the Act"), the first petitioner herein, being a Company registered under the said Act, was required to file with the Registrar of Companies, a return in the prescribed form, within 30 days, in respect of allotment of 25 shares of the said company on 08/10/1971. Therefore, the said return was required to be filled in and sent to the said complainant, on or before 01/11/1971; that the first petitioner submitted the said form with the Registrar of Companies on 03/03/1975 and thus, was late in submitting the said return by three years, three months and 24 days. Therefore, the Registrar of Companies, in exercise of its powers under Section 611 of the said Act, imposed additional fees of Rs.350/- and demanded the same from the said company, the first petitioner herein, vide letter dated 07/06/1975. But, the first petitioner failed to pay the said amount, inspite of reminder dated 01/07/1975; that as the said additional fees were not paid despite demand notice, the said document in form 2 was returned to the said company by registered post on 22/10/1975; that the said company failed and neglected to file the said return of allotment of shares, despite notice and reminders; that therefore, the said accused persons named in the said complaint have committed the said offence. The Registrar of Companies, therefore, requested the said Court to deal with the said complaint and the accused persons and punish them according to law.

4. The petitioners have preferred this petition in order to pray to quash the said complaint, mainly on the ground that the complaint was time barred. It appears from the record that this contention was raised by the

petitioner before the trial court stating that the complaint was time barred. The learned Magistrate dealt with the said issue and dismissed the said application on 07/12/1996. The application and the order of the learned Magistrate can be gathered at page 16.

5. The learned Magistrate was of the view that the offence was a continuing offence and therefore, it was not time barred. The petitioner has preferred this petition to quash the said complaint, again on the ground that the complaint was time barred by law of Limitation as laid down in Section 467 of the said Code. Therefore, it ought not to have been entertained by the trial court. The matter was finally heard. The second petitioner appeared before this Court as party-in-person and argued the matter as party-in-person on behalf of both the petitioners.

6. The petitioner arguing the matter in support of his petition, has drawn my attention to Form no.2 at page 13. It is the zerox copy of the said form. The second petitioner has argued that the Registrar of Companies had power to fix the amount of additional fees and that the said officer fixed the fees at Rs.122/-, which was paid by the first petitioner and the endorsement on page 13 reflects the said payment and there is the entry of receipt of the said amount of Rs.122/- there in the said document at page 13.

7. Now, the learned Standing Counsel for the Central Government appearing on behalf of the Registrar of Companies has made it clear that it is not shown from the record that Registrar of Companies had reduced the amount of fees from Rs.350/- to Rs.122/- and that the first petitioner had paid the said amount of Rs.122/- towards the said fees.

8. Even the endorsement at page 13 does not disclose that the amount of Rs.122/- was paid by the first petitioner towards the said additional fees. There is nothing on record to show that the Registrar of Companies had reduced the said fees from Rs.350/- to Rs.122/-. It is not shown from the said endorsement as to for what purpose, the amount of Rs.122/- was paid by the petitioner company to the Registrar of Companies. It is, therefore, not possible to agree with the argument of the second petitioner that the fee was reduced to Rs.122/- and the said fees was paid by the first petitioner to the Registrar of Companies.

9. It is further contended that some additional

amounts were also collected from the first petitioner. At one place, the amount paid is shown to be Rs.2,375/- and at another place, the amount paid is shown to be Rs.122/-. At one place, it is found that the amount of Rs.350/- has been paid up on 05/05/1976. It has also been shown at one place that the petitioner - Company had paid Rs.1,561/- to the Registrar of Companies. Now, these different amounts have been paid on different dates and it would be a subject matter of inquiry before the trial court, as to the purpose for which the said amounts were paid by the first petitioner to the Registrar of Companies.

10. There being no other further material, it is not possible to hold, at this stage, that the Registrar of Companies had reduced the amount of fees from Rs.350/- to Rs.122/-. It is also not possible to hold at this stage that the receipt of Rs.122/shown in page 13, stands to be the payment towards the said fees, allegedly reduced by the Registrar of Companies as alleged by the petitioner. It would be open to the petitioners to prove the said fact before the trial court at the stage of trial. So far the amount of Rs.1,561/- is concerned, it is also not shown as to the purpose for which the said amount was paid by the petitioners. It would be open to the petitioners to prove the said fact before the trial court, at the stage of trial. It, therefore, cannot be said that the first petitioner had already paid the requisite amount of fees to the Registrar of Companies and therefore, the complaint cannot be quashed on that ground.

11. Another aspect of the case, as per the argument of the second petitioner is that the complaint ought to have been filed within six months and instead, it has been filed after a long time. The learned Magistrate has considered this aspect of the case and has observed that, in view of the provisions made in Section 467 of the said Code and considering the fact that the offence is a continuing one, the complaint cannot be treated to be time barred. In order to appreciate the said position, we may refer to subsection 4 of Section 75 of the said Act, which shows that, in case of default made in complying with Section 75 of the said Act, every Officer of the company, who is in default, shall be punishable with fine, for every day during which the default continues.

12. This would necessarily mean that the legislature has itself considered this offence to be a continuing one, till the default continues. In the present case, we find that even according to the document placed at page

13 by the petitioners, the amount of Rs.350/- required by the Registrar of Companies was paid by the petitioners on 05/05/1976. In other words, the offence in question, continued to be there till 05/05/1976 and therefore, as the complaint has been filed in 1976, it cannot be treated to be time barred.

13. For this purpose, we can refer to the provisions made in Section 468 of the said Code, wherein the limitation for filing of complaint has been laid down. Indisputably, an offence punishable under Section 75(4) of the said Act is punishable with fine only. The limitation fixed for filing the complaint is six months. There cannot be any dispute about the same. Here, we may consider the provisions made in Section 472 of the said Code, wherein, it has been laid down that in case of a continuing offence, a fresh period of limitation shall begin to commence, at every moment of the time, during which the offence continues. This means that the law of Limitation laid down in Section 468 stands modified by subsequent subsection 472 of the said Code and therefore, when the offence is a continuing one, then in that event, the complaint cannot be said to be time barred. It is required to be considered that as said earlier, subsection 4 of Section 75 of the said Act provides that fine will be leviable for every day, during which the default continues. This would show that the offence is treated to be a continuing one. Therefore, on reading the two provisions referred to hereinabove, the learned Magistrate has found that the offence a continuing one and therefore, the complaint cannot be treated to be time barred. This approach on the part of the learned Magistrate cannot be said to be unreasonable, unjust, improper or illegal and therefore, the complaint cannot be quashed on that count.

14. It has also been argued by the second petitioner that though the complaint was filed in 1976, it has been re-numbered in 1991. This is an administrative function of the Court. Sometimes, the cases are being transferred from one court to another and new numbers are allotted, when they are transferred to another court. Therefore, this would not be a ground for quashing the complaint.

15. It has also been argued by the second petitioner that though the complaint was filed in 1976 and though it was re-numbered in 1991, the summons were served on the second petitioner very late. Now, if the complaint was filed in 1976 and it was re-numbered and re-registered in 1991 and if the summons were served for the first time in 1996, no judicial order is required to be passed for this

purpose. The Vigilance Officer of this High Court was joined as respondent no.3. The said Officer had nothing to do with the merits of the present petition and therefore, his name was ordered to be deleted by order dated 03/07/03. Anyway, looking to the facts and circumstances of the case and looking to the passage of time, I do no find it to be expedient, to direct that inquiry may be made into the matter, as to why the process of summons was served late.

16. It has then been contended that the Officer who has filed the complaint had no authority to file the same. It can be gathered from the complaint itself, a copy whereof has been placed at page 8 that the complaint has been filed by the Registrar of Companies. It has to be accepted that the complaint has been filed by an Officer authorized to do the same. It is not shown as to how the Registrar of Companies is prevented from filing a complaint. A last attempt was made by the second petitioner to argue that fees have been collected from the first petitioner, on more than one occasions and that too not in accordance with law. Now, this would be a question of fact. If the petitioner feels that a particular amount of fees was illegally levied and collected, then in that event, the said fact can be placed before an appropriate Court appropriately and it may be decided in accordance to law.

17. Nevertheless, it is a fact that the amount of fees of Rs.350/- required to be paid was not paid within time and therefore, the complaint has been filed. Therefore, it cannot be said that no offence has been made out against the petitioners and in that case, the complaint cannot be quashed.

18. A decision in Sindhi Kasam Moti V/s. M.N.Buch reported in 1984 GLH 893 was relied upon, in order to argue that when no affidavit-in-reply was filed, then averments made in the petition should be accepted as correct. In the above case, the respondent did not remain present in the Court, inspite of clear direction of the court. This is not a fact before us. Moreover, the facts alleged have been dealt with by the learned advocates for the respondents and when the facts alleged in the petition can be dealt with on production of documents and on the basis of the averments made in the complaint and petition, then, non-filing of affidavit by the respondents, would not be fatal to the defence of the respondents.

19. A decision in M.S. Ahlawat V/s. State of

Haryana reported in AIR 2000 SC 168 was also relied upon. This was a different matter with a different set of facts. There it was laid down that the Supreme Court does not assume jurisdiction by issue of a notice proposing conviction for forgery and making false statement at different stages in the court punishable under Section 193 IPC without following the procedure prescribed under Section 195 and 340 of IPC. In my reading of the judgment, it is not applicable on the facts of the case on hand.

20. An attempt was also made to argue that the Registrar of Companies was not authorized to collect fees of Rs.350/- and therefore, the notice of demand was illegal. It has further been argued that the Registrar of Companies had reduced the amount of fees from Rs.350/- to Rs.122/- and the same has been paid by the first petitioner. Now, if the demand and demand notice were illegal, then it was not necessary for the petitioners to pay even Rs.122/-. Moreover, it has not been shown as to how the demand and demand notice were illegal. Therefore, it cannot be said that the demand and demand notice were illegal and that the Registrar of Companies was not authorized to demand payment of Rs.350/- from the petitioners. Therefore, the consequent collection of fees of Rs.350/- by the Registrar of Companies from the petitioners cannot be treated to be illegal, for the purpose of this petition.

21. It is true that the said fees of Rs.350/- has been subsequently paid up by the petitioner on 05/05/1976. Naturally, the Registrar of Companies had not demanded payment of fees for the period subsequent to 05/05/1976.

22. In above view of the matter, the present petition does not show that the complaint is prima facie time barred. The petitioners also do not show that the Registrar of Companies had no right to demand fees of Rs.350/-. It is not shown that the Registrar of Companies had no authority to file the complaint. In that view of the matter, the present petition is without any merit and deserves to be dismissed. For the foregoing reasons, this petition is ordered to be dismissed. Rule discharged.

(D. P. Buch, J.)

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